

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1371 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHAUDHARI JESANGBHAI MEGHJIBHAI

Versus

PARI NATHABHAI DAHYABHAI

Appearance:

MR SURESH M SHAH for Petitioner
MS TRUSHA K PATEL for Respondent Nos. 1/1 & 1/2
MR BY MANKAD AGP for Respondents nos.2, 3 & 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/02/2001

ORAL JUDGEMENT

Heard the learned advocates.

Rule returnable today.

Learned advocate Miss Patel appears for and waives service on behalf of the respondents nos. 1/1 & 1/2. Learned AGP Mr. B.Y Mankad has, at the suggestion of the Court, accepted advance service on behalf of the respondents nos. 2, 3 & 4 and waives service of rule.

This petition arises of the order dated 21st October, 1999 made by the Mamlatdar & ALT, Ahmedabad in Tenancy Case no. 21/99/70 [nb] confirmed by the Deputy Collector on 2nd February, 2000, in Tenancy Appeal No. 122 of 1999 and by the Gujarat Revenue Tribunal in Revision Application No. TEN/B.A/65/2000 on 31st January, 2001.

The petitioner before this Court has claimed right of tenancy over the land bearing Survey no. 185/1 of village Achar, District-Ahmedabad. The petitioner, therefore, moved an application under section 70 [b] of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereafter referred to as 'the Act'] before the Mamlatdar & ALT, Ahmedabad. Alongwith the aforesaid tenancy case, the petitioner also moved an application for interim injunction under section 70 (nb) of the Act. Initially, on presentation of the application, the petitioner was granted an order of 'status quo'. However, on further hearing, under the impugned order dated 21st October, 1999, the 'status quo' earlier ordered to be maintained, has been lifted which has been confirmed in appeal and revision, as aforesaid. Feeling aggrieved, the petitioner has preferred the present petition.

Mr. Shah has contended that the application made under section 70 (b) of the Act requires to be tried in the manner prescribed under the Mamlatdars' Courts Act, 1906. However, in the present case, without following the due procedure, in course of hearing of the interim application under section 70 (nb), the Mamlatdar & ALT has decided the entire application under section 70 (b) of the Act. This manifest error committed by the Mamlatdar & ALT has been repeated by the appellate authority ie., the Deputy Collector and the revisional authority i.e., the Gujarat Revenue Tribunal. He has, therefore, submitted that all the three orders made by the Mamlatdar & ALT and the Deputy Collector and the Revenue Tribunal require to be set-aside and the interim application made by the petitioner should be reconsidered, keeping in view not only the prima facie case but also the balance of convenience and the hardship that may be suffered by the petitioner. He has also referred to the documents produced on the records of this matter and has submitted that considering the documents

on record, neither of the authorities below nor the Tribunal could have come to a conclusion that the petitioner is not in possession of the land in question or atleast in view of the finding recorded by the authorities below, the status quo ought to have been continued, pending hearing and final disposal of application made under section 70 (b) of the Act.

Ms. Patel has appeared for the respondents nos. 1/1 & 1/2 and has submitted that the impugned order dated 21st October, 1999 made by the Mamlatdar & ALT is in fact an order on interim application under section 70 (nb) of the Act and is not a final order under section 70 (b) of the Act. The said order has accordingly been understood by the Deputy Collector as well as the Tribunal. She has, therefore, relied upon the observations made by the Deputy Collector to the effect that, 'the petitioner shall have a sufficient opportunity to establish his case before the Mamlatdar & ALT' [translated into English]. She has relied upon the observations made by the Tribunal in paragraph 33 of its judgement, which reads as under :-

'33. I may add that whatever I have said in this order and is only for the purpose of prima facie case and the same shall not be taken into consideration by the learned Mamlatdar & ALT while deciding the main matter under section 70 (b) of the Act. In that matter learned Mamlatdar & ALT may come to his independent conclusion without considering this order.'

On perusal of the impugned judgment and orders of the authorities below and the Tribunal, it does appear that the Mamlatdar & ALT has inadvertently not only disposed of the interim application under section 70 (nb) of the Act but has also dismissed the entire application under section 70 (b) of the Act. It is indisputable that before deciding the application under section 70 (b) of the Act, the trial as envisaged under the Mamlatdars' Courts Act, 1906, has not been conducted nor the parties have led evidence, if any. Even the appellate authority as well as the Tribunal have examined the records and have given their finding as regards the possession of the petitioner ie., that the petitioner was not in possession of the land in question. In fact, as the law requires, neither of the authorities below nor the Tribunal ought to have expressed any final decision on the matters at issue while deciding an interim application. All that the authorities below and the Tribunal were required to examine was whether the petitioner had established a

prima facie case and the question of balance of convenience and the hardships. Neither of the authorities below nor the Tribunal has addressed on the points of balance of convenience and hardship. The entire matter has been decided on the finding that the petitioner was not in possession of the land in question. In my view, both the authorities below and the Tribunal have erred in deciding the matter at issue as if the matter were being finally decided, after holding due trial. The procedure adopted by the Mamlatdar & ALT has obviously prejudiced the case of the petitioner. The petition, therefore, deserves to be allowed.

In view of the above discussion, the judgment and the order of the Gujarat Revenue Tribunal dated 31st January, 2001 passed in Revision Application no. TEN/BA/65/2000 is quashed and set-aside. The impugned order of the Deputy Collector in Tenancy Appeal No. 122/99 [Annexure-B to the petition] and the order dated 21st October, 1999 of the learned Mamlatdar & ALT also are quashed and set-aside. The interim application made by the petitioner under section 70 (nb) of the Act shall be reconsidered by the Mamlatdar & ALT, keeping in view the prima facie case, the balance of convenience and the hardship. It is further directed that the petitioner's application made under section 70 (b) of the Act shall be decided after holding due trial as envisaged under the Mamlatdars' Courts Act, 1906.

Rule is made absolute. The parties shall bear their own costs.

[Miss R.M Doshit, J.]

Prakash*